

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

SARAH PERKINS, EMILY WRIGHT,  
individually and on behalf of all others  
similarly situated,

CASE NO. 2:25-cv-00019-JHC

ORDER DENYING MOTION TO COMPEL  
ARBITRATION

**Plaintiffs,**

V.

RUGS.COM LLC,

## Defendant.

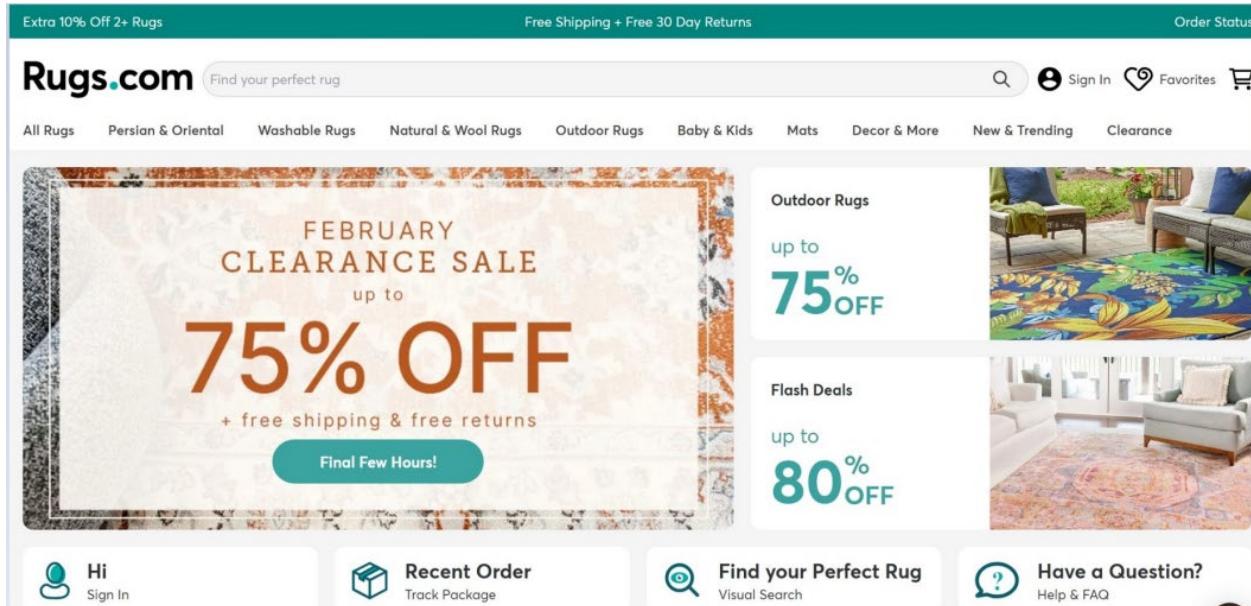
I

This matter comes before the Court on Defendant Rugs.com LLC's Motion to Compel Arbitration. Dkt. # 5. The Court has considered the materials filed in support of and in opposition to the motion, the rest of the file, and the governing law. The Court finds oral argument unnecessary. Being fully advised, for the reasons below, the Court DENIES the motion.

## II

## BACKGROUND

Rugs.com is an online retailer selling rugs and other home décor through its website [www.rugs.com](http://www.rugs.com). Dkt. # 13 at 6.<sup>1</sup> Below is an image from its site:



Dkt. # 14-1 at 10.<sup>2</sup>

Plaintiffs Sarah Perkins and Emily Wright subscribe to emails from Rugs.com. See Dkt. # 1-1 at 8, 10 ¶ 33, 38.<sup>3</sup> Plaintiffs signed up for emails from Rugs.com by inputting their email addresses on the website and clicking the “Join Now” button. Dkt. # 14-1 at 17. Below is an image showing the button:

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<sup>1</sup> The information contained in this section derives from Plaintiffs’ Complaint and the parties’ briefing and exhibits related to the motion.

<sup>2</sup> The images used in this Order were provided to Plaintiffs by Rugs.com in response to Plaintiffs’ Requests for Production. Dkt. # 14 at 2. They were attached as exhibits to the Declaration of Blythe H. Chandler. *Id.*

<sup>3</sup> The Complaint does not specify when Plaintiffs signed up for emails from Rugs.com. See generally Dkt. #1-1. But it appears that Wright has been receiving emails from Rugs.com since 2020. See *id.* at 8 ¶ 30. Further, Rugs.com’s records show that Perkins signed up for emails in March 2024. Dkt. # 5-1 at 4 ¶ 11.

**BENEATH EVERY MOMENT**

1 Our rugs are there for the first dance, baby's first steps, movie night, cozy winter evenings, and every moment you treasure.

2 We have over 100,000 rugs to choose from. Rugs for all styles, seasons, rooms indoor and outdoor, and events like birthday parties, weddings, outdoor extravaganzas. With millions of rugs shipped, you  
have probably seen one of our rugs in the homes of your friends and on popular tv shows and movies. We're a family owned and operated business and are experts with over 60 years experience in han-  
notted and machine woven rugs. We stand by every rug we sell with a 30 day free return policy - we pay for the return shipping if the rug doesn't work out.

3 All rugs are delivered with fast & free shipping from our warehouses in South Carolina and California.

4 We have award winning customer support, available 24/7 on live chat and email and are available to take your call until late.

5 Shop with Rugs.com, we promise knot to let you down!

**Be First To Know**

6 Get access to exclusive sales, new arrivals, and save up to 80% Off Retail.

7 Email Address

Join Now

**24/7 Customer Service**

8 Trouble with your order? Drop us a line by phone any time, day or night!

**Fast & Free Shipping**

9 Over 4 million rugs in stock. All rugs ship within one business day!

**Free Returns**

10 New rug not working out?  
Send it back for no charge within 30 days.

11 *Id.*

12 Rugs.com's Terms of Use are available via a "Terms of Use" hyperlink at the bottom of each page on the site. Dkt. # 14-1 at 18. It appears in black text set against a grey background.

13 *Id.* It appears to the right of another hyperlink labeled "Privacy Policy." *Id.* The image below shows the hyperlinks:

**24/7 Customer Service**

14 Trouble with your order? Drop us a line by phone any time, day or night!

**Fast & Free Shipping**

15 Over 4 million rugs in stock. All rugs ship within one business day!

**Free Returns**

16 New rug not working out?  
Send it back for no charge within 30 days.

17 VISA MASTERCARD AMERICAN EXPRESS DISCOVER Apple Pay PayPal affirm

**About Rugs.com**

18 Blog  
Store Location  
Plant a Tree  
Teacher Giveaway  
Disaster Relief  
Site Map

**Shop**

Affirm  
Bestsellers  
Trade Program  
Enter Daily Giveaway

**Support**

Contact Us  
Order Status  
FAQs  
Help Center  
Rugs 101  
Return Policy  
Accessibility

**Follow Us**

19 "Beneath every moment"

20 Privacy Policy Terms of Use

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21 RUGS.COM\_000019

23

24

1           The record does not show that Plaintiffs ever clicked on the “Terms of Use” hyperlink or  
 2 read Rugs.com’s Terms of Use. *See* Dkt. ## 14-2, 14-3 at 19. Had Plaintiffs clicked on the  
 3 hyperlink, they would have been taken to a page containing the full text of Rugs.com’s Terms of  
 4 Use. *See* Dkt # 5-2. The Terms of Use state, in relevant part,

5           PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY BEFORE  
 6 USING THE SITES. YOUR ACCESS AND/OR USE OF A SITE CONFIRMS  
 7 YOUR UNCONDITIONAL ACCEPTANCE OF THE FOLLOWING TERMS. IF  
 YOU DO NOT FULLY ACCEPT THESE TERMS, DO NOT USE OR ACCESS  
 A SITE. These Terms of Use constitute an agreement between Rugs.com LLC and  
 you.

8           *Id.* at 2. Paragraph 18 contains an arbitration provision, which states,

9           **18. Legal Disputes and Arbitration**

10          YOU AND RUGS.COM LLC AGREE TO GIVE UP ANY RIGHTS TO  
 11 LITIGATE CLAIMS IN A COURT OR BEFORE A JURY OR TO  
 12 PARTICIPATE IN A CLASS ACTION OR REPRESENTATIVE ACTION WITH  
 13 RESPECT TO A CLAIM. OTHER RIGHTS THAT YOU WOULD HAVE IF  
 14 YOU WENT TO COURT, SUCH AS ACCESS TO DISCOVERY, ALSO MAY  
 15 BE UNAVAILABLE OR LIMITED IN ARBITRATION. Any dispute, claim,  
 16 demand, disagreement, or controversy between you and Rugs.com LLC, its agents,  
 17 employees, officers, directors, principals, successors, assigns, subsidiaries, and/or  
 affiliates (collectively, “Rugs.com”), whether sounding in tort, contract, quasi-  
 contract, equity, or by statute, arising from or relating your use of the site, your  
 purchase of any goods, and/or to these Terms of Use and their interpretation or  
 breach, termination, or validity thereof, the relationships which result from these  
 Terms of Use, including disputes about the validity, scope or enforceability of the  
 mandatory arbitration provision contained therein (collectively, “Claims”) will be  
 settled by binding arbitration.

18           *Id.* at 7.

19          Plaintiffs sued Rugs.com on behalf of themselves and a putative class of similarly  
 20 situated individuals. Dkt. #1-1. They assert that Rugs.com sent them false and  
 21 misleading emails with subject lines designed to trick consumers into opening the email  
 22 and making purchases. *Id.* at 2 ¶ 1. For example, Plaintiffs say that on May 20 and 21,  
 23 2024, Rugs.com sent emails about an up to 80% off “Memorial Day Preview Sale” that

was “Ending Soon!” but Rugs.com continued to offer the sale for the next nine days, through May 29, 2024. *Id.* at 10 ¶ 38. Plaintiffs contend that Rugs.com’s practices violate the Washington Commercial Electronic Mail Act, RCW 19.190, and the Washington Consumer Protection Act, RCW 19.86. *Id.* at 3 ¶ 5. Rugs.com now moves to compel arbitration. Dkt. # 5.

Rugs.com contends that Plaintiffs must pursue their claims in individual arbitration because of the arbitration provision included in the Terms of Use. Dkt. # 5. It asserts that Plaintiffs are bound by the Terms of Use because they visited the website and signed up to receive promotional emails. Dkt. # 5 at 7. Plaintiffs contend that they are not bound by this arbitration provision because they did not assent to Rugs.com's Terms of Use. Dkt. # 13 at 13–17.

## III

# DISCUSSION

#### A. The Federal Arbitration Act

Under the Federal Arbitration Act (FAA), written agreements to arbitrate “shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.” 9 U.S.C. § 2. The FAA reflects a “liberal federal policy favoring arbitration agreements.” *Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983). In passing the FAA, Congress “directed courts to abandon their hostility and instead treat arbitration agreements as ‘valid, irrevocable, and enforceable.’” *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 505 (2018) (quoting 9 U.S.C. § 2). “The overarching purpose of the FAA . . . is to ensure the enforcement of arbitration agreements according to their terms so as to facilitate streamlined proceedings.” *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 344 (2011).

When evaluating a motion to compel arbitration, courts generally limit their review to two issues: “(1) whether there is an agreement to arbitrate between the parties; and (2) whether the agreement covers the dispute.” *Brennan v. Opus Bank*, 796 F.3d 1125, 1130 (9th Cir. 2015).

B. The Existence of an Agreement to Arbitrate

As for the first requirement, the party seeking to compel arbitration “bears the burden of proving the existence of an agreement to arbitrate by a preponderance of the evidence.” *Johnson v. Walmart Inc.*, 57 F.4th 677, 681 (9th Cir. 2023) (citing *Knutson v. Sirius XM Radio Inc.*, 771 F.3d 559, 565 (9th Cir. 2014)); *see also Three Valleys Mun. Water Dist. v. E.F. Hutton & Co.*, 925 F.2d 1136, 1141 (9th Cir. 1991) (“The district court, when considering a motion to compel arbitration which is opposed on the ground that no agreement to arbitrate had been made between the parties, should give to the opposing party the benefit of all reasonable doubts and inferences that may arise.”) (internal quotation omitted).

“In determining whether a valid arbitration agreement exists, federal courts ‘apply ordinary state-law principles that govern the formation of contracts.’” *Nguyen v. Barnes & Noble Inc.*, 763 F.3d 1171, 1175 (9th Cir. 2014) (quoting *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 944 (1995)). And “although online commerce has presented courts with new challenges, traditional principles of contract still apply.” *Wilson v. Huuuge, Inc.*, 944 F.3d 1212, 1219 (9th Cir. 2019); *Nguyen*, 763 F.3d at 1175 (“While new commerce on the Internet has exposed courts to many new situations, it has not fundamentally changed the principles of contract.”).

The parties agree that Washington law governs the contract formation issue. Dkt. ## 5 at 8; 13 at 2. Washington follows the objective manifestation test for contract formation. *Wilson Court Ltd. P'ship v. Tony Maroni's, Inc.*, 134 Wash.2d 692, 699, 952 P.2d 590 (1998); *see also Keystone Land & Dev. Co. v. Xerox Corp.*, 152 Wash. 2d 171, 177, 94 P.3d 945 (2004) (stating

1 that “for a contract to form, the parties must objectively manifest their mutual assent”). Courts  
 2 glean mutual assent “from outward manifestations and circumstances surrounding the  
 3 transaction.” *Burnett v. Pagliacci Pizza, Inc.*, 196 Wash. 2d 38, 50, 470 P.3d 486, 492 (2020)  
 4 (internal citation omitted). And “[t]he party asserting the existence of . . . a contract, whether  
 5 express or implied, bears the burden of proving each essential element, including the existence of  
 6 a mutual intention. *Becker v. Wash. State Univ.*, 165 Wash. App. 235, 246, 266 P.3d 893 (2011)  
 7 (internal citation omitted).

8 Contracts formed online typically fall into two categories: “clickwrap” (also known as  
 9 “click-through”) or “browsewrap” agreements. See *Nguyen*, 763 F.3d at 1175–76 (citing  
 10 *Register.com, Inc. v. Verio, Inc.*, 356 F.3d 393, 403 (2d Cir. 2004)). To enter into a clickwrap  
 11 agreement, a website user clicks an “I agree” box after the website presents them with a list of  
 12 terms and conditions of use. *Id.* As for browsewrap agreements, the website’s terms and  
 13 conditions of use are usually posted at the bottom of the webpage and accessible via a hyperlink.  
 14 *Id.*

15 At issue here is a browsewrap agreement. The website user purportedly assents to  
 16 Rugs.com’s Terms of Use simply by using the website without having to visit the Terms of Use  
 17 webpage or needing to acknowledge that by using the website they assent to the Terms of Use.  
 18 See *Be In, Inc. v. Google Inc.*, No. 12-CV-03373-LHK, 2013 WL 5568706, at \*6 (N.D. Cal.  
 19 Oct. 9, 2013) (“The defining feature of browsewrap agreements is that the user can continue to  
 20 use the website or its services without visiting the page hosting the browsewrap agreement or  
 21 even knowing that such a webpage exists.”); Dkt. # 14-1 at 1–22. And “[b]ecause no affirmative  
 22 action is required by the website user to agree to the terms of a contract other than his or her use  
 23 of the website, the determination of the validity of the browsewrap contract depends on whether  
 24 the user has actual or constructive knowledge of a website’s terms and conditions.” *Nguyen*, 763

1 F.3d at 1176 (9th Cir. 2014) (quoting *Van Tassell v. United Mktg. Grp., LLC*, 795 F. Supp. 2d  
 2 770, 790 (N.D. Ill. 2011)); *Gill v. Chipotle Mexican Grill, Inc.*, No. 8:24-CV-01672-FWS-JDE,  
 3 2025 WL 287320, at \*3 (C.D. Cal. Jan. 23, 2025) (noting that “[c]ourts are more reluctant to  
 4 enforce browsewrap agreements because consumers are frequently left unaware that contractual  
 5 terms were even offered, much less that continued use of the website will be deemed to manifest  
 6 acceptance of those terms.”) (quoting *Berman v. Freedom Fin. Network, LLC*, 30 F.4th 849, 856  
 7 (9th Cir. 2022)) (alteration in original).

8 Rugs.com contends that Plaintiffs assented to the arbitration provision because the  
 9 “Terms of Use” hyperlink is available at the bottom of each page on its website. Dkt. # 5 at 6. It  
 10 also argues that Plaintiffs are bound by the arbitration provision because they signed up for  
 11 emails from Rugs.com on the website. *Id.* at 9. The company says that “reasonable users” of  
 12 Rugs.com would know that by using the site, including providing their email to the company,  
 13 they are subject to “legal consequences, like a binding contract.” *Id.*

14 Plaintiffs respond that Rugs.com did not provide them with “reasonably conspicuous  
 15 notice” of the Terms of Use. Dkt. # 13 at 12 (quoting *Berman*, 30 F.4th at 856). They say that  
 16 the “Terms of Use” hyperlink is located at the bottom of the webpage in a small font and is not  
 17 distinguishable from the surrounding non-hyperlinked text. *Id.* They contend that the “Join  
 18 Now” button to subscribe to emails is not preceded by or followed by any text suggesting that  
 19 clicking on the button constitutes an acceptance of the Terms of Use. *Id.* at 14 (citations  
 20 omitted). They also say that the “Join Now” button and the “Terms of Use” hyperlink are not  
 21 located near each other and there is no reason for a consumer to scroll down to the “Terms of  
 22 Use” hyperlink on the bottom of the page.

23 No evidence suggests that Plaintiffs had actual knowledge of Rugs.com’s Terms of Use.  
 24 See Dkt. ## 14-2, 14-3 at 19. Thus, “the validity of the browsewrap agreement turns on whether

1 the website puts a reasonably prudent user on inquiry notice of the terms of the contract.”

2 *Nguyen*, 763 F.3d at 1177. And whether a user had inquiry notice of the contract “depends on  
3 the design and content of the website and the agreement’s webpage.” *Id.* As the Ninth Circuit  
4 observed, “where the link to a website’s terms of use is buried at the bottom of the page or  
5 tucked away in obscure corners of the website where users are unlikely to see it, courts have  
6 refused to enforce the browsewrap agreement.” *Id.* (collecting cases). The law demands at least  
7 some level of perspicuity.

8 Here, the “Terms of Use” hyperlink is at the bottom of the webpage and the text is in a  
9 small black font against a grey background. Dkt. # 14-1 at 18; *See Pollstar v. Gigmania, Ltd.*,  
10 170 F. Supp. 2d 974, 981 (E.D. Cal. 2000) (refusing to enforce browsewrap agreement where  
11 textual notice appeared in small gray print against a gray background); *cf. Oberstein v. Live*  
12 *Nation Ent., Inc.*, 60 F.4th 505, 516 (9th Cir. 2023)(“[C]rucially, the ‘Terms of Use’ hyperlink is  
13 conspicuously distinguished from the surrounding text in bright blue font, making its presence  
14 readily apparent.”). And the webpage pairs colorful images of Rugs.com’s products with large,  
15 bright fonts promoting the products. Dkt. # 14-1 at 10. This makes the small “Terms of Use”  
16 hyperlink placed at the very bottom of the webpage even less conspicuous. The textual notice is  
17 “deemphasized by the overall design of the webpage, in which other visual elements draw the  
18 user’s attention away from” the small text at the bottom of the webpage. *Berman*, 30 F.4th at  
19 857. Consequently, it is less likely that a reasonable Internet user would have seen the “Terms of  
20 Use” hyperlink. *See* Dkt. # 14-1 at 10–18; *see also Berman*, 30 F.4th at 856 (emphasizing that  
21 “to be conspicuous in this context, a notice must be displayed in a font size and format such that  
22 the court can fairly assume that a reasonably prudent Internet user would have seen it”).

23 And Rugs.com’s contention that Plaintiffs’ decision to sign up for promotional emails  
24 from Rugs.com put them on inquiry notice of the Terms of Use is unavailing. As Plaintiffs point

1 out, they simply clicked on the “Join Now” button to sign up for promotional emails. They were  
 2 not provided with any information that would put a reasonably prudent web user on notice that  
 3 by signing up for promotional emails that they would be assenting to Rugs.com’s Terms of Use.  
 4 *Cf. Saeedy v. Microsoft Corp.*, 757 F. Supp. 3d 1172, 1190 (W.D. Wash. 2024) (determining that  
 5 the plaintiffs were put on inquiry notice because during the online account creation process,  
 6 users were informed that by clicking on a button they assented to the company’s terms and  
 7 conditions). And even though Rugs.com contends that its Terms of Use were conspicuous  
 8 because of the proximity between the “Join Now” button and the “Terms of Use” hyperlink, Dkt.  
 9 # 15 at 3, “even close proximity of the hyperlink to relevant buttons users must click on—  
 10 without more—is insufficient to give rise to constructive notice.” *Nguyen*, 763 F.3d 1171, 1178–  
 11 79 (9th Cir. 2014).<sup>4</sup> As the Ninth Circuit observed in *Nguyen*, “the onus must be on website  
 12 owners to put users on notice of the terms to which they wish to bind consumers. Given the  
 13 breadth of the range of technological savvy of online purchasers, consumers cannot be expected  
 14 to ferret out hyperlinks to terms and conditions to which they have no reason to suspect they will  
 15 be bound.” *Id.* at 1179.

16 Thus, Plaintiffs did not have sufficient notice that by visiting Rugs.com’s webpage and  
 17 signing up for promotional emails that they would be bound by the company’s Terms of Use.  
 18  
 19

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20       <sup>4</sup> Rugs.com asserts that the “Join Now” button and “Terms of Use” hyperlink “always appear  
 21 together,” but there is colorful text and images below the “Join Now” button and above the “Terms of  
 22 Use” hyperlink. *See* Dkt. ## 14-1 at 17–18; 15 at 4. Thus, there is no reason to believe that a reasonable  
 23 web user would assume a relationship between the button and the hyperlink. *See Serrano v. Open Rd.*  
*Delivery Holdings, Inc.*, 666 F. Supp. 3d 1089, 1096–97 (C.D. Cal. 2023) (noting that “when the terms  
 24 and conditions to which a user is asked to agree are accessed through a hyperlink, ‘the design of the  
 hyperlinks must put such a user on notice of their existence,’ and ‘[a] web designer must do more than  
 simply underscore the hyperlinked text in order to ensure that it is sufficiently ‘set apart’ from the  
 surrounding text.’”) (quoting *Berman*, 30 F.4th at 857) (alteration in original).

Accordingly, Plaintiffs did not unambiguously manifest assent to the Terms of Use, and they are not bound by the arbitration provision contained therein.<sup>5</sup>

IV

Based on the above, the Court DENIES the motion to compel arbitration.

Dated this 3rd day of June, 2025.

John H. Chan

John H. Chun  
United States District Judge

<sup>5</sup> Because Plaintiffs did not manifest their assent to the Terms of Use, the Court need not reach Rugs.com's remaining arguments.